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Attorneys for Defendant: **CRANE CO.**

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

HELEN P. WASHINGTON, individually and as
successor in interest to Decedent JOHN H.
WASHINGTON, JR., DANA WASHINGTON,
ANTHONY MCKINNEY, HELEN MCKINNEY
and KENNETH HARRIS,

Plaintiffs,

v.

AMERICAN STANDARD, INC., et al.,

Defendants.

Case No. BC 376529

[Assigned for all purposes to the Hon. Aurelio
Munoz - Dept. 47]

**NOTICE OF RULINGS ON MOTIONS
FOR SUMMARY JUDGMENT AND
MOTIONS TO EXCLUDE OR PRECLUDE
USE OF DECEDENT'S DEPOSITION
TESTIMONY**

Trial Date: [None]

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Defendant Crane Co.'s Motions for Summary Judgment and to Exclude or Preclude Use of Decedent's Deposition Transcript came on for hearing on April 7, 2009, in Department 47 of the above-referenced court, the Honorable Aurelio Munoz presiding. Defendant McWane, Inc.'s unopposed Motion for Summary Judgment also came on for hearing at that time. Counsel from the law firm of K&L Gates, LLP appeared on behalf of Defendant Crane Co. Counsel from the law firm of Hill Farrer & Burrill appeared on behalf of Defendant McWane, Inc. Counsel from the law firm of Waters Kraus & Paul, LLP appeared on behalf of Plaintiffs.

After consideration of the briefs and evidence submitted by the parties, and oral arguments of counsel, the Court adopted its tentative rulings, a true and correct copy of which is attached hereto as Exhibit "A". By adopting the tentative ruling, the Court ordered as follows:

- McWane Inc.'s Motion for Summary Judgment, which was unopposed, was GRANTED;
- Crane Co.'s Motion for Summary Judgment was DENIED; and
- Crane Co.'s Motion to Exclude or Preclude Use of Decedent's Deposition Testimony was DENIED.

The Court also ruled that Defendant Union Carbide's Motion to Exclude or Preclude Use of Decedent's Deposition Testimony, which was previously taken under submission, is DENIED for the reasons set forth in the Court's tentative ruling on Crane Co.'s similar motion.

Counsel for Crane Co. was ordered to give notice.

K&L GATES LLP

Dated: April 7, 2009

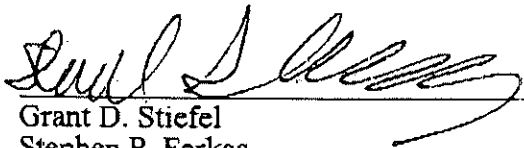
By: 
Grant D. Stiefel
Stephen P. Farkas
Daniel S. Hurwitz
Attorneys for Defendant **CRANE CO.**

Exhibit A

**LAW & MOTION
DEPT. 47
APRIL 7, 2009
NO.**

**BC 376 529
HELEN P WASHINGTON ET AL
V.S.
AMERICAN STANDARD INC ET AL**

**MOTIONS FOR SUMMARY JUDGMENT BY
DEFENDANTS CRANE CO AND MCWANE INC;
MOTIONS BY VARIOUS DEFENDANTS TO
EXCLUDE THE DEPOSITION TESTIMONY OF
DECEDENT JOHN WASHINGTON JR**

The unopposed motion for summary judgment by defendant McWane Inc is granted. The motion for summary judgment by defendant Crane Co is denied. There is evidence in the record to indicate Mr Washington (decedent) was exposed to asbestos from gaskets that were used in the boiler rooms at Narbonne High School. Even putting aside the use of plaintiff's Texas deposition testimony there is a factual issue as to whether decedent was exposed to asbestos from a Crane product.

The motion to exclude or preclude plaintiffs to use the decedent's deposition testimony is reluctantly denied. This court does not have the authority to summarily prohibit the use of otherwise admissible testimony even if the court does not approve of the games, and they are games, that are being played. Plaintiff's law firm, which is a multi-state firm, has, in at least, nine other cases, filed cases in Texas which were then dismissed, after the plaintiff's deposition had been taken. The reason for this procedure is apparently because under Texas Law the deposition is severely limited to six hours per side. Additionally, under Texas law the failure to mention the defendant's product is a basis for summary judgment. The law in this state is to the contrary. (See *Scheidig v Dinwiddie Constr. Co.* (1999) 69 Cal.App.4th 64.)

Here, the decedent was apparently a resident of California, had a second residence in Alabama. There is also apparently no question that the theory of the case is that he was exposed to asbestos while working in this state. When defendant was initially diagnosed with mesothelioma on or about December 14, 2006, they contacted their attorneys who waited until May 2007 to file the Texas action. Thereafter, about two months later, in July 2007 his deposition was taken in Alabama at his second residence pursuant to and in accordance with the Texas Rules of Civil procedure. At the time the deposition was taken

not all of the defendants had even been served.

After the decedent's deposition was completed the Texas action was dismissed and this action was filed. Decedent's counsel almost immediately filed for and was granted a trial preference because decedent was not expected to live. Decedent's counsel also, initially, took the position decedent would not be produced for depositions in this state because his deposition had already been taken in the Texas proceeding. Later counsel claimed decedent was too ill to proceed with a deposition. When decedent passed away the present plaintiffs, who are his wife and children, were substituted in as plaintiffs.

It is the court's opinion that the filing of the Texas action was deliberately done to prevent the defendants from having adequate discovery and to prevent the filing of motions for summary judgment because of the California rule requiring specific questions about product identification. (See *Scheidung v Dinwiddie Constr. Co.* (1999) 69 Cal.App.4th 64.) Although this can be thought of as a procedural ploy that is permissible because it is not specifically prohibited, the practical problems for the courts and the defendants are many.

Because the defendants have effectively been prohibited from questioning the decedent they are barred from presenting motions for summary judgment. Plaintiffs, on the whole, will not consent to dismissals even when they have no evidence against a specific defendant. Rather, they force the defendants to file motions for summary judgment and then file notices of non-opposition. The object appears to be to keep the defendants in as long as possible in order to force settlements out of those defendants in lieu of dismissals. It is not unusual to have trials with trial estimates of 15 to 20 days, commencing with 10 or more defendants. As a result many jurors have to be called, a longer jury selection occurs and the settlements begin to occur during jury selection and even as the opening statements are being made. The main theme seems to be settle or we'll run up the attorneys fees so high that it is cheaper to settle. Rarely do the cases go to verdict. Instead what is accomplished is a waste of the court's time, the burning of numerous jurors because of the one day one trial rules and what seems to be a type of judicially sanctioned extortion.

In short this is the grisly game of asbestos litigation that occurs in the courts. The court is of the opinion that it cannot grant the relief requested, but perhaps an appellate court can.

PROOF OF SERVICE

[Washington v. American Standard, et al. - BC 376529]

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 10100 Santa Monica Boulevard, Seventh Floor, Los Angeles, California 90067.

On the date set forth below, I served the foregoing document(s) described as:

NOTICE OF RULINGS ON MOTIONS FOR SUMMARY JUDGMENT AND MOTIONS TO EXCLUDE OR PRECLUDE USE OF DECEDENT'S DEPOSITION TESTIMONY

on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope(s) addressed and sent as follows:

Michael L. Armitage
WATERS KRAUS & PAUL LLP
222 N. Sepulveda Blvd., Suite 1900
El Segundo, CA 90245
Tel.: 310-414-8146; Fax: 310-414-8156

PLAINTIFFS' COUNSEL

By: Facsimile

Co-Defense Counsel
By: Facsimile
(See attached Service List)

- BY MAIL: I caused such envelope(s) to be deposited in the mail at Los Angeles, California with postage thereon fully prepaid to the office of the addressee(s) as indicated above. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.
- BY PERSONAL SERVICE: I caused such envelope to be hand-delivered to the offices of the addressee(s) as indicated above. A proof of service will be executed by process server upon completion.
- BY FACSIMILE: I caused a courtesy copy to be transmitted by facsimile to the facsimile number of the offices of the addressee(s) as indicated above and below (see service list).
- STATE: I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 7, 2009, at Los Angeles, California.


Marilyn M. Guichard